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SIG-TN-2026-05 —

The Will Discovery Problem

lost wills · will registration

A technical note on lost wills, the presumption of revocation, and the discovery infrastructure of England and Wales — including the registration scheme Parliament enacted in 1982 and has never brought into force

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English law examines a will's validity with great care and its findability not at all. The formalities of execution are policed at a single ceremony; what happens to the document afterwards — where it is kept, who knows it exists, whether anyone can produce it when its maker dies — is nobody's statutory business. There is no compulsory registration of wills in England and Wales, and whether a will is registered has no effect on its validity. Yet a will that cannot be found produces, in practice, the same result as a will that was never made: the estate passes on intestacy, or under an earlier document that happens to be producible.

It does something stranger than leaving it to chance. Where a will was last known to be in the testator's own keeping and cannot be found at death, the law presumes the testator destroyed it intending to revoke it. Absence is read as intention. The presumption is rebuttable, and the leading authority on rebutting it — *Sugden v Lord St Leonards* — concerns the will of a former Lord Chancellor, drafted by his own hand, missing from a locked box that still contained its eight codicils. Probate of a copy or reconstruction is possible, by registrar's order, on evidence.

The infrastructure that would prevent all of this exists in fragments. A statutory depository for the wills of living persons has operated since before the Senior Courts Act 1981 gave it its current footing, for a fee of £23; the Law Commission's 2025 report suggests its main defect is that too few people have heard of it. A commercial register holds the location of millions of wills, voluntarily. And sections 23 to 25 of the Administration of Justice Act 1982 — the statutory skeleton of a national deposit-and-registration scheme, with the Principal Registry of the Family Division as national body under the 1972 Basle Convention — have been on the statute book for forty-four years without ever being brought into force. In 2025 the Law Commission considered compulsory registration afresh and declined to recommend it. Discovery is therefore a household discipline by default; § 6 states the discipline.

KEYWORDS *lost wills; will registration; presumption of revocation; Sugden v Lord St Leonards; will storage; probate; England and Wales*

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DISCLOSURE NOTE

The author is the founder of Valoren, a household continuity and personal-governance platform being developed through Standard Index Group. This technical note is an independent description of the law and public infrastructure of England and Wales concerning the custody, registration, and discovery of wills. No product, service, or commercial claim is evaluated in the note, and the analysis is presented in method-neutral terms. The author has received no external research funding for this work. All views are the author's own. This paper is not legal advice. It is provided for research and informational purposes only.

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There are three ways a will can fail its household. This series, as it turns out, now has a paper for each. A will can fail at the start, by never being validly executed under s.9 of the Wills Act 1837 — the formalities and their failure points are the subject of SIG-TN-2026-03. It can fail slowly, by remaining valid while ceasing to say what its maker means — the stale will of SIG-WP-2026-08. And it can fail at the end, at the only moment a will is ever actually used, by being valid, current, and nowhere to be found. This note is about the third failure, and it completes the set deliberately: after this, the series has covered the will that was never made properly, the will that stopped being meant, and the will that cannot be produced.

The third failure has a structural feature the other two lack. A will that was invalidly executed was always a nullity, and a stale will at least operates, however badly. An unfound will is a perfectly good will that operates not at all — the sharpest instance in the series of the gap SIG-WP-2026-01 places at the centre of household continuity, between what is legally valid and what is operationally executable. Nothing is wrong with the instrument. Everything is wrong with the household's ability to deploy it.

It is worth being precise about what "discovery" requires, because it is more than one thing. For a will to work, three facts must survive its maker: that a will exists; where it is; and how the original — not a copy — reaches the probate registry, since a grant issues on the original will and a copy is admitted only by exception, under an order discussed in § 3.3. Each of the three can fail independently. A family can know a will exists and never find it. A family can hold a copy and not the original. And a family can, without any of these being anyone's fault, simply not know whether there is anything to look for — the question sits unasked in many households until a death makes it unavoidable, and by then the one person who could answer it reliably is the person being administered.

The note proceeds as follows. § 3 sets out what the law does when a will cannot be found, which is not neutral. § 4 surveys the discovery infrastructure that actually exists — state, commercial, and the remarkable case of the infrastructure that exists only on paper. § 5 brings the problem down to household level, and § 6 states the discipline that answers it. The note is confined to England and Wales, is method-neutral throughout, and evaluates no provider or product. Scotland and Northern Ireland have their own law.

§ 3 What the law does with a missing will

§ 3.1 The presumption of revocation

Revocation by destruction is one of the closed list of ways a will can be revoked. Section 20 of the Wills Act 1837 permits revocation "by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same". Destruction without intention revokes nothing; intention without destruction revokes nothing. So far, so protective of the testator.

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last seen there, and is not forthcoming at death, the law presumes that the testator destroyed it with the intention of revoking it. The rule is as old as *Welch v Phillips* (1836), and the Privy Council's statement of it has not needed improving: "If a will, traced to the possession of the deceased, and last seen there, is not forthcoming on his death, it is presumed to have been destroyed by himself; and that presumption must have effect, unless there is good and sufficient reason to repel it." The reasoning is that a person of ordinary caution keeps an instrument of such importance safe; if it cannot be found where the testator kept it, the least surprising explanation is that its keeper did away with it deliberately.

The presumption deserves a moment's attention, because its effect is easy to understate. The will is, loosely, lost — but the law does not treat a lost will as mislaid. It treats it, unless the presumption is rebutted, as revoked: the missing document is not merely unavailable to the family but deemed to have been deliberately cancelled by its maker, with the estate passing accordingly. The strength of the presumption varies with the character of the testator's custody — a will kept loosely, in a house many people could enter, raises a weaker inference of deliberate destruction than a will kept under lock and key, since the alternatives to deliberate destruction are correspondingly more plausible. Custody, in other words, is not a practical afterthought to the doctrine. It is an input to it. And the presumption's reach should be stated precisely: it arises where the will was last traced to the *testator's* custody. A will last held by a solicitor or other custodian raises a different factual inquiry altogether, because its non-production carries no similar inference that the testator personally destroyed it.

§ 3.2 The Lord Chancellor's will

The leading case on rebutting the presumption is worth telling with its facts intact, because the facts carry the analytical point.

Edward Sugden, Lord St Leonards, had been Lord Chancellor — the head of the English legal system — and was among the most distinguished property lawyers of his century. He made his will in 1870, in his own hand, and added eight codicils to it over the following three years. He kept the will and the codicils in a locked box at his home. The lock, the court later heard, was easily opened; a spare key existed and was not kept securely. He died in January 1875, at ninety-three. The box was opened. The eight codicils were there, together with other testamentary papers. The will was not, and no search ever produced it.

On those facts the presumption of revocation arose and was rebutted. The Court of Appeal reasoned, among other things, that a careful Chancery lawyer intending to revoke his will would scarcely have destroyed the will while preserving the eight codicils that depended on it; the surviving papers made deliberate revocation the *less* probable explanation for the document's absence. And the case then established the rule for which it is remembered: the contents of a lost will, like those of any other lost instrument, may be proved by secondary evidence — including the testator's own declarations before and after execution, and including the evidence of a single witness with an interest in the outcome, if the court is satisfied of that witness's honesty and accuracy. Lord St Leonards' daughter had read the will many times, and its substance was proved from her memory.

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is the identity of the testator. The man whose will could not be found had spent a professional lifetime at the summit of the law of property; he drafted his own will; he stored it in a locked box; and the discovery problem defeated him anyway, at the cost of full-scale litigation that ran from first instance to the Court of Appeal. Expertise in making wills conferred no protection at all against losing one.

§ 3.3 Probate of a copy, and what failure looks like

Where the original cannot be produced, rule 54 of the Non-Contentious Probate Rules 1987 provides the route. An application for an order admitting to proof "a will contained in a copy or reconstruction thereof where the original is not available" is made to a registrar (r. 54(1)), supported by an affidavit setting out the grounds and by such evidence as the applicant can adduce (r. 54(3)) on three matters: the will's existence after the death of the testator or, failing that, the facts relied on to rebut the presumption of revocation; and, for a reconstruction, its accuracy. The registrar may require further evidence of due execution or of the copy's accuracy, and may direct that notice be given to anyone who would be prejudiced — which is worth pausing on, since the people prejudiced by proof of a copy will are precisely the people who inherit if the copy fails. There is a narrow exception where the original is held by a foreign court or official, in which case an authenticated copy may be admitted without an order (r. 54(2)).

Rule 54 is a genuine remedy, and *Sugden* shows the court system rising to the occasion when the evidence is there. But the remedy prices in everything the household failed to preserve. It requires evidence, affidavits, potentially contested proceedings, and — where the presumption bites — proof sufficient to displace the law's default reading that the missing will was deliberately destroyed. The family of a testator who kept a copy at home and lodged the original nowhere in particular is asking a registrar to reconstruct, on paper, the certainty the original would have supplied by existing.

And where the route fails, the outcomes are the two this series has already mapped. If no will can be proved, the estate passes on intestacy — the default scheme, and the specific households it no longer describes, are the subject of SIG-WP-2026-09. If an *earlier* will can be produced, the family may well prove that one, in perfect good faith, never knowing a later will existed: probate in common form proceeds on the documents put before it. The estate is then administered under a will its maker had superseded — the stale-will failure of SIG-WP-2026-08, delivered by a different mechanism — and if the lost will later surfaces, the grant can be revoked and the succession reopened, with all the disruption that implies. The Law Commission's consultees described exactly this hazard: an unregistered will is exposed to being "lost", including by a person who has, in the Commission's own dry phrase, an interest in losing it.

§ 4 The discovery infrastructure that exists

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§ 4.1 The obscure state depository

England and Wales has had a statutory answer to safe custody for a very long time. Section 126 of the Senior Courts Act 1981 requires that there be provided, "under the control and direction of the High Court, safe and convenient depositories for the custody of the wills of living persons", open to any person on payment of a fee; the operating detail sits in the Wills (Deposit for Safe Custody) Regulations 1978, which provide for deposit, withdrawal, and the procedure on the testator's death.

The scheme is real and functioning. In its current operational form — as set out in HMCTS's published guidance, updated 2 May 2025 — the testator downloads and completes an envelope label (form PA7ENV, block capitals, witnessed), posts the will by recorded delivery to the Probate Service's storage facility at Newcastle District Probate Registry, pays a one-off fee of £23, and receives a certificate of deposit within about two weeks. There is no charge for retrieval; the testator can withdraw the will at any time, and after death the will is released for proving. (From 13 July 2026, subject to parliamentary approval, the fee rises to £24.) For a modest one-off fee, the discovery problem's second and third questions — where is the will, and how does the original reach the registry — are answered by the same institution that will eventually demand the answers.

The scheme's difficulty is not its design. The Law Commission, surveying it in 2025, described the Principal Registry's scheme accurately, and its one suggestion for it was that the scheme "be better publicised". A statutory facility that answers the core of the discovery problem has existed for decades, and the considered view of the law reform body in 2025 was that its principal defect is obscurity. The Commission's discussion cites no usage figures, and no routine public figure appears to be published against which the scheme's uptake could be measured; the Commission's view on publicity speaks for itself. The author can add one anecdotal datum to the Commission's point: until researching this note, he had never heard of the scheme.

§ 4.2 The state archive, after the fact

The state's custodial performance changes character entirely once a will has been proved. Under section 124 of the Senior Courts Act 1981, all original wills under the control of the High Court are "deposited and preserved" and open to inspection; the resulting archive holds, on the Ministry of Justice's own figure, some 110 million documents, growing annually. A proved will is a public record: anyone may search the probate records online and obtain a copy of a will proved in England and Wales since 1858 for £16, with a new record appearing online roughly fourteen days after the grant issues.

The scale of the commitment was recently tested. In December 2023 the Ministry of Justice consulted on digitising the archive and destroying most of the paper originals after twenty-five years, preserving the wills of selected notable individuals. The response, published on 8 January 2025, abandoned the destruction proposal in terms — the Government "will not pursue any reform that involves the destruction of original will documents" and will instead look at other means of offsetting storage costs — and so all original proved wills continue to be preserved. The episode is a useful reminder that even the state's own custody arrangements are periodically renegotiated; the custody horizon of a will is measured in decades, and SIG-TN-2026-04 § 4 examines what that horizon does to electronic custody in particular.

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archives in the country, searchable by anyone with sixteen pounds and a surname. Before probate — the only period during which finding the will actually matters to anyone — the state's entire offer is the voluntary deposit scheme of § 4.1. A researcher can order a Victorian stranger's will online; an executor may spend weeks establishing whether their own parent left one. The infrastructure is superb on exactly the wrong side of the event.

§ 4.3 The registration scheme that has never been switched on

Registration and storage are different services, and the Law Commission's report states the distinction cleanly (para 5.161): registration records that a will exists and where it is kept; storage holds the document itself. The commercial layer in England and Wales is predominantly a registration layer — the registries "do not generally store wills but instead record their location" (para 5.166). The largest, the National Will Register with its associated Certainty Will Search service, was described to the Commission by the Bar Council as "very frequently used, with millions of wills now registered with the service" (para 5.177). Registration is voluntary throughout, and whether a will is registered has no effect whatever on its validity.

What is less well known is that Parliament built a public version of this machinery forty-four years ago. Sections 23 to 25 of the Administration of Justice Act 1982 provide for registering authorities in each part of the United Kingdom to maintain depositories and registers of the wills of living persons; they designate the Principal Registry of the Family Division as the national body for the purposes of the Convention on the Establishment of a Scheme of Registration of Wills, concluded at Basle on 16 May 1972, with functions including arranging registration of English wills in other contracting states; and they confer the regulation-making powers to run the whole scheme. The sections received Royal Assent in 1982. They have never been brought into force. The United Kingdom has never ratified the Basle Convention. As I write, forty-four years on, every one of those sections remains marked "prospective" on the statute book — legislated, printed, and waiting — and the Law Commission's 2025 report disposes of the entire subject in a footnote recording exactly that. (The same Act's provisions for international wills, sections 27 and 28, are in the same condition. The 1982 Act was ambitious about wills infrastructure in several directions at once, and commencement followed in none of them.)

§ 4.4 The 2025 decision to leave things as they are

The Law Commission's *Modernising Wills Law* (2025) is the most recent considered examination of whether any of this should change, and its registration chapter repays precise reading. The Commission accepted that a compulsory registration system "could prevent wills from being lost and ensure that a testator's last will could be reliably identified" (para 5.184). It nonetheless recommended no reform requiring registration (para 5.187), for reasons that are, I think, right on their own terms and worth stating fairly rather than lamenting. A registration requirement is only effective if backed by a sanction, and the only effective sanction is invalidity; making unregistered wills invalid would fall hardest on exactly the wills made furthest from professional help — the homemade will, the deathbed will — and would convert a discovery safeguard into a fresh formality trap. Compulsory registration suits notarial systems, where a public official already attends every will; England and Wales has no notarial wills. The Commission reached the same conclusion for electronic wills specifically, declining to

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secured by other means (paras 8.165 to 8.167). Registration of the voluntary industry it left expressly outside its project's scope.

The result is a settled position with a clear shape. The state has declined — once by forty-four years of non-commencement, once by considered recommendation — to make findability any part of what the law guarantees about a will. The reasons are respectable each time. But the consequence should be stated as plainly as the Commission stated the problem: the risk that a will is simply never found, or found late, or found by the one person with an interest in its absence, is a risk the legal system has knowingly left where it lies. It lies with the household.

§ 5 The household as the discovery system of record

Strip away the fragments in § 4 and what remains, in the ordinary case, is this: the only discovery infrastructure most wills have is the memory of the people around the testator.

That infrastructure fails in undramatic ways. The executor who has never been told they are the executor — an appointment that carries no notification requirement of any kind — learns of the role, if at all, when someone else finds the document naming them. The family that does not know whether a will exists at all cannot search for it meaningfully, and the subject is one that many households never once raise aloud; the question of what documents exist is often genuinely unanswerable from inside the household until a funeral forces it, at which point the one person who could have answered it reliably is no longer there to ask, and it is answered by search instead. Whether wills exist in my own family I do not know: the subject is met with a certain secrecy, or simply never raised, and the one death the family has had — my grandfather's, in my childhood — came too early for me to see whether there was any paperwork to find. The solicitor's strongroom holds an original for a client who moved house twice and left no forwarding note in either direction. Each of these is a discovery failure in the exact sense of SIG-TN-2026-02, which treats document-discovery failure generally: the documents exist; the substitute operator cannot find them.

The series' own architecture locates this note precisely. A will must clear three independent layers to do its work: it must be validly executed (SIG-TN-2026-03); the physical instrument must survive — paper, ink, storage conditions, decades (SIG-TN-2026-01); and it must be findable and producible by the people who need it, which is this note's layer, and the general discipline for which — the Designated Place Framework, a maintained record of where high-consequence documents are kept — is SIG-TN-2026-02's subject. The layers fail independently, and a failure at any layer defeats success at the others; the discovery layer is merely the one that fails silently for the longest, because nothing in ordinary life ever tests it. A household can go decades holding a valid, current, well-stored will that nobody but its maker could locate, and no event short of the death itself will reveal the difference between that household and one whose arrangements actually work.

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terms: a paper will can at least be left in a findable place, whereas an electronic document is "one among hundreds or thousands of electronic files", possibly password-protected individually or behind an account, hostage to unpaid storage fees and to software that may not open decades-old formats. The reliable-system requirements of the draft Wills Bill — examined in SIG-TN-2026-04 — exist substantially because electronic custody dissolves the very properties that make a paper original findable and provable. On the present evidence, digitisation intensifies the discovery problem rather than solving it.

§ 6 The discovery discipline

What answers the problem is not a product and not a law reform. It is a short list of facts deliberately placed in more heads than one, and checked at long intervals. The inspection is stated here in full, and — consistently with this series' practice — it is a discipline any household can run with no expenditure beyond, at most, the deposit fee in § 4.1.

1. **Existence.** At least two people other than the testator know that a will exists: as a minimum, the executor and one other. Every executor named in the will knows of the appointment, and knows who the other executors are.
2. **Location.** The same people know where the original is — a specific place, not a category: the named firm holding it, the deposit certificate for the Probate Service scheme, the exact place at home. If the household keeps a record of document locations, the will's entry is current.
3. **Access.** Whoever holds the original will release it: the executors know the holding firm's name as it now is (firms merge and rename), hold or can find the deposit certificate, or can physically reach the place. Copies, if kept, are marked as copies, so that no one mistakes a copy for the original.
4. **Currency.** On every new will or codicil: the superseded original is retrieved and dealt with as the new will's maker intends, the location record and any registration are updated, and the people in item 1 are told again. A registration or deposit that still points at a revoked will is not a safeguard; it is a signpost to the wrong document.

The occasions for re-checking are the same events that put the will itself on the desk — the review triggers of SIG-WP-2026-08 § 6 — plus one this note adds: any change in the *holding* arrangements, a firm closing, a house move, a box rehomed. None of the four items requires professional assistance. All four can be defeated by a single uncommunicated change of mind, which is why the checklist is a discipline rather than a task: it holds only for as long as it is re-run. Nor does the known place need to be grand. The nearest thing to one in my own orbit is a binder in a wardrobe — which, for item 2's purposes, is a perfectly good answer, so long as the right people know about the wardrobe.

§ 7 Limitations

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consultees divided between those who thought missing wills rare and those who reported families routinely spending time and money establishing whether a will exists, and the Commission decided the registration question without resolving the point. The honest position is that the prevalence is unknown, and this note's argument does not depend on it: the presumption of revocation, rule 54, and the uncommenced 1982 scheme are features of the system whatever the case-count.

The figures and operational details in § 4 are correct as at the date on this note and will not stay correct: the deposit and copy fees are those published by HM Courts and Tribunals Service as at 5 July 2026, with the 13 July 2026 changes noted where announced. On the copy fee specifically: the £16 figure in § 4.2 is the ordinary online probate-record copy service as described at the date of this note; the July 2026 fee update separately creates a £2 fee for copies requested concurrently with a probate application, and the announcement leaves the ordinary service's fee as described. The description of the National Will Register's scale is the consultees' description as recorded by the Law Commission, not an independently audited figure — the register's coverage is not verified here, and no view is offered on any commercial provider. The account of *Sugden* relies on the law reports and modern scholarly retellings; the case's evidential rules have a long subsequent history in the authorities that this note does not trace. Contentious probate practice around lost wills — the litigation this note exists to make less likely — is outside scope, as are Scotland and Northern Ireland throughout.

This paper is not legal advice. It is provided for research and informational purposes only.

§ 8 Conclusion

The law of England and Wales attends to a will exactly twice: once at execution, with formality and witnesses and two centuries of doctrine, and once at probate, after which it preserves the document, on current policy, forever. Between those two moments — the decades during which the will must simply survive and stay findable — the law offers a presumption that reads absence as revocation, a registrar's procedure for proving copies when things have already gone wrong, a £23 depository it would like better publicised, and the statutory skeleton of a national registration scheme that has sat uncommenced on the statute book since 1982. Compulsory registration has been considered and, for defensible reasons, declined. Nothing in that settlement is likely to change soon, and this note has argued that a household should plan on the settlement as it is.

What the settlement means is that findability is private infrastructure. The state will confirm a will's validity and, eventually, archive it beautifully; whether the document ever makes the journey from the bottom drawer to the registry depends entirely on facts the household did or did not put in other people's heads while there was still time. *Sugden* is the standing demonstration that no degree of legal sophistication exempts anyone from this: the discovery problem defeated a Lord Chancellor in his own house. It is answered, when it is answered, by the four unglamorous items in § 6 — known existence, known location, workable access, maintained currency — kept true across the years by nothing more elaborate than telling people, and then telling them again when something changes.

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A will speaks from death. It cannot be cross-examined.

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§ 9.1 Statutes and statutory instruments

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Non-Contentious Probate Rules 1987 (SI 1987/2024), r. 54. Available at: https://www.legislation.gov.uk/uksi/1987/2024

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§ 9.2 Cases

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§ 9.3 Law Commission, government, and official sources

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§ 9.4 Related papers in this series

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